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Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/783,640
Filing Date: February 20, 2004
Appellant(s): SILKAITIS ET AL.

Michael R. Crabb, Reg. No. 37,298
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 09/08/2011 appealing from the Office action mailed 06/09/2011.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 14-17 and 19-24.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being

maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

US-2002/0038392	De La Huerga, Carlos	03-2002
US-7,154,397	Zerhusen et al.	12-2006
US-6,208,974	Campbell et al.	03-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. **Claims 14-17, 19, and 21-24** are rejected under 35 U.S.C. 103(a) as being unpatentable over 2002/0038392 to De La Huerga in view of U.S. Patent 7,154,397 to Zerhusen.

3. As per claim 14, De La Huerga teaches a system for administering medication to a patient comprising:

--an infusion pump comprising: a pump housing (Fig. 17 and 26) (see: De La Huerga, paragraph 145, is met by pump includes a housing),

--a processor that acts as a web server disposed in the pump housing, wherein the processor is configured to communicate with a web browser client device that is remote from the infusion pump (Fig. 17 and 26)(see: De La Huerga, paragraph 145, is met by controller portion of the pump including a processor and accessible memory; and paragraph 149, is met by processor also linked to a communication channel 255 such as an intranet or the Internet for communication with other facility or remote computing and storage devices - Fig. 17 shows this Internet communication channel 255 in direct communication with controller 260),

--a unitary display located on the pump housing and in communication with the processor, (Fig. 17 and 26) (see: De La Huerga, paragraph 145, 148, and 149, is met by display linked to the processor),

--wherein the display comprises a first portion and, wherein the first portion is configured to display a pump information screen (Fig. 17 and Fig. 18) (see: De La Huerga, paragraph 173, is met by parameter settings displayed on pump screen; paragraph 152, is met by flow rate, duration, dose, and volume; and paragraph 164, is met by information being displayed on screen so that physician can visually confirm basic information (e.g., patient name, general physical characteristics)).

De La Huerga teaches a display with touch screen keys on a computer linked and associated with the pump (see: De La Huerga, paragraph 163), but does not specifically teach that the pump display is a *dual function touch screen.*

Additionally, De La Huerga teaches a processor in a intravenous pump linked to a communication channel such as an intranet or the Internet for communication with other facility or remote computing and storage devices (see: De La Huerga, paragraph 145 and 149), but does not specifically teach *a second portion*, *and wherein the second portion is configured to concurrently display a web browser screen*.

However, Zerhusen teaches a touch screen (see: Zerhusen, column 5, lines 54-67; and column 13, lines 42-59) with two portions displayed simultaneously (Fig. 43, first portion is met by ele. 630 and concurrently shown second portion is met by ele. 632)(see: Zerhuzen, column 14, lines 3-12) and a second of which is configured to display an Internet icon that actuates a customized home page or other Internet connection and software including a browser for interfaces with the server and Internet (Fig. 43, ele. 658)(see: Zerhusen, column 14, lines 3-12; column 16, lines 40-47; column 34, lines 4-32; and column 35, lines 5-20).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of De La Huerga and Zerhusen. The well known elements described are merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

4. As per claim 15, De La Huerga and Zerhusen teach the invention as claimed, see discussion of claim 14, and further teaches:

--*wherein the pump information comprises a digital photo of a patient the infusion pump is currently associated with* (Fig. 49) (see: Zerhusen, column 14, line 56 through column 15, line 3, is met by computer generating a screen that includes the patient's name, time, scheduled medication to give, schedule does to give, and methods of administration, an image or photo of the patient illustratively displayed to confirm that the patient is the correct patient).

5. As per claim 16, De La Huerga and Zerhusen teach the invention as claimed, see discussion of claim 14, and further teach:

--*wherein the pump information comprises pump monitor information* (Fig. 17 and Fig. 18) (see: De La Huerga, paragraph 173, is met by parameter settings displayed on pump screen; paragraph 152, is met by flow rate, duration, dose, and volume; and paragraph 164, is met by information being displayed on screen so that physician can visually confirm basic information (e.g., patient name, general physical characteristics).

6. As per claim 17, De La Huerga and Zerhusen teach the invention as claimed, see discussion of claim 16, and further teach:

--*wherein the pump monitor information includes infusion pump operating parameters selected from a group of infusion pump operating parameters consisting of dose, rate, duration and volume* (Fig. 17 and Fig. 18)(see: De La Huerga, paragraph 173, is met by parameter settings displayed on pump screen; and paragraph 152, is met by flow rate, duration, dose, and volume).

7. As per claim 19, De La Huerga and Zerhusen teach the invention as claimed, see discussion of claim 14, and further teach:

--wherein the processor supplies the web browser client device with web browser information (Fig. 43, ele. 658) (see: Zerhusen, column 14, lines 3-12; column 16, lines 40-47; column 34, lines 4-32; and column 35, lines 5-20, is met by an Internet icon and a customized home page or other Internet connection being made, and a browser for interfacing with server and the Internet, software configured to provide internet access to websites).

8. As per claim 21, De La Huerga and Zerhusen teach the invention as claimed, see discussion of claim 14, and further teach:

--wherein the processor supplies the web browser client device with pump information (see: Zerhusen, column 1, lines 25-43, is met by computer receiving automatically information from various monitors including IV pumps; column 6, lines 1-7, is met by treatment device connected to the computer; and column 36, line 25 through column 37, line 4, is met by patient record retrieval and input, patient physiological monitoring, and medication management).

9. As per claim 22, De La Huerga and Zerhusen teach the invention as claimed, see discussion of claim 14, and further teach:

--a medication management unit in electronic communication with the infusion pump and having a processing unit and a storage medium coupled to the processing unit, the storage medium containing programming code executed by the processing unit to (Fig. 17 and 26)(see: De La Huerga, paragraph 145, is met by controller portion of

the pump including a processor and accessible memory; and 149, is met by processor also linked to a communication channel such as an intranet or the Internet for communication with other facility or remote computing and storage devices):

-store infusion pump operating parameters specific to a patient (Fig. 17 and Fig. 18)(see: De La Huerga, paragraph 152, is met by flow rate, duration, dose, and volume); *and a digital photo of the patient in the storage medium* (Fig. 49)(see: Zerhusen, column 14, line 56 through column 15, line 3, is met by computer generating a screen that includes the patient's name, time, scheduled medication to give, schedule does to give, and methods of administration, an image or photo of the patient illustratively displayed to confirm that the patient is the correct patient);

As per the limitations:

-transmit the infusion pump operating parameters specific to a patient and the digital photo of the patient from the medication management unit to the infusion pump; and

--wherein the processor of the infusion pump receives the infusion pump operating parameters specific to a patient and the digital photo of the patient from the medication management unit and displays the infusion pump operating parameters specific to a patient and the digital photo of the patient as pump information.

They are taught by the combination of De La Huerga and Zerhusen. De La Huerga teaches parameter settings displayed on pump screen including flow rate, duration, dose, and volume and information being displayed on screen so that

physicians can visually confirm basic information (e.g., patient name, general physical characteristics)(Fig. 17 and Fig. 18)(see: De La Huerga, paragraph 173; paragraph 152; and paragraph 164). Zerhusen teaches a computer generating a screen that includes the patient's name, time, scheduled medication to give, schedule does to give, and methods of administration, an image or photo of the patient illustratively displayed to confirm that the patient is the correct patient (Fig. 49)(see: Zerhusen, column 14, line 56 through column 15, line 3).

10. As per claim 23, De La Huerga and Zerhusen teach the invention as claimed, see discussion of claim 15, and further teach:

--wherein the digital photo of a patient the infusion pump is currently associated with is transmitted directly to the infusion pump by a patient identification indicator device located on the patient (see: Zerhusen, column 14, line 56 through column 15, line 3, is met by scanning patient wristband to receive patient identification and based thereon generates the patient information, including image or photo of the patient, for confirmation by the caregiver).

11. As per claim 24, De La Huerga and Zerhusen teach the invention as claimed, see discussion of claim 14, and further teach:

--wherein the processor is configured to permit a remote web browser to associate with the infusion pump to configure the infusion pump (Fig. 17)(see: De La Huerga, paragraph 149, is met by processor also linked to a communication channel 255 such as an intranet or the Internet for communication with other facility or remote computing and storage devices - Fig. 17 shows this Internet communication channel

255 in direct communication with controller 260; and paragraph 208, is met by controller 260 is employed to control pump units for modifying mendicant delivery).

12. **Claim 20** is rejected under 35 U.S.C. 103(a) as being unpatentable over 2002/0038392 to De La Huerga in view of U.S. Patent 7,154,397 to Zerhusen further in view of U.S. Patent 6,208,974 to Campbell.

13. As per claim 20, De La Huerga and Zerhusen teach the invention as claimed, see discussion of claim 19, and as per the limitation:

--wherein the web browser information includes a caregiver task list.

De La Huerga teaches a communication channel such as an intranet or the Internet for communication with other facility or remote computing and storage devices (Fig. 17 and 26)(see: De La Huerga, paragraph 145; and 149) and Zerhusen teaches a customized home page or other Internet connection being made (Fig. 43, ele. 658)(see: Zerhusen, column 14, lines 3-12; column 16, lines 40-47; column 34, lines 4-32; and column 35, lines 5-20), but neither specifically teach information including *a caregiver task list*; however, Campbell teaches network access of by doctors and nurses of to-do lists (Fig. 11 and Fig. 12)(see: column 5, line 35 through column 6, line 27; column 19, lines 24-43; and column 25, lines 3-21).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of De La Huerga, Zerhusen, and Campbell. The well known elements described are merely a combination of old elements, and in the combination, each element merely would have performed the

same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

(10) Response to Argument

1. Appellant's arguments from the response filed on 09/08/2011 have been fully considered and will be addressed below in the order in which they appeared.

2. In the remarks, Appellant argues in substance that (1) "[t]he combination of De La Huerga and Zerhusen does not describe an infusion pump comprising "a processor that acts as a web server disposed in the pump housing, wherein the processor is configured to communicate with a web browser client device that is remote from the infusion pump", as in independent claim 14" because:

- the "interpretation of the processor 103 of the pump 100 in De La Huerga as a web server is incorrect because the controller 260 does not retrieve information from the pump 100 over the Internet, but rather retrieves information from the pump 100 over a connecting wired cable. There is no Internet connection or network between the pump 100 and the controller 260 in De La Huerga" and that
- "[o]ne of ordinary skill in the art would not consider the pump 100 in De La Huerga as a web server and, in fact, De La Huerga teaches away from the pump acting as a web server."

The Examiner respectfully disagrees. Appellant's arguments are not persuasive.

Microsoft Press Computer Dictionary Third Edition defines a web server as "On the internet or other network, a computer or program that responds to commands from a

client. For example, a file server may contain an archive of data or program files; which a client submits a request for a file, the server transfers a copy of the file to the client". Appellant has not claimed a "web server" but has claimed a processor that "acts as a web server". This is because there is nothing particular about a server that distinguishes it from most clients except for its function. If a processor "acts as" a web server, then it is a web server. And just as Appellant's processor is a web server because it acts as a web server, so is the processor that is described in the prior art.

Appellant has claimed "web server" broadly and its common meaning has been applied. As exemplified in the above dictionary definition, a web server is defined by its function. Appellant's intended use of the web server is the same as the combination of De La Huerga and Zerhusen.

De La Huerga teaches that the processor on the infusion pump is linked to a communication channel 255 such as an intranet or the Internet for communication with other facility or remote computing and storage devices—this is stated explicitly in paragraph 149 as cited. Paragraph 149 of De La Huerga teaches, "as illustrated in FIG. 17, processor 103 is also linked to a communication channel 255 such as an intranet or the Internet for communication with other facility or remote computing and storage devices". Indeed, Fig. 17 of De La Huerga shows this communication channel 255 in communication with controller 260. Paragraph 207 and 208 of De La Huerga teach that the controller 260 is employed to retrieve information from the pumps and control the pump units by modifying mendicant delivery. Hence, De La Huerga's pump unit including the processor act as a server and meet Appellant's broad limitation. Therefore,

De La Huerga does not teach away from the claimed invention and in fact teaches the same functionality as broadly claimed.

In the arguments, Appellant further characterizes connections 255 of De La Huerga as a “connecting wire cable” and “wired cables”, and further cites paragraph 195 of De La Huerga for support. With unstated reasoning by Appellant this appears to be used by Appellant to characterize the communication channels as “not the “Internet””. There are several points to be made here.

Firstly, it is noted that the features upon which Appellant relies (i.e., “Internet”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Appellant argues further that De La Huerga “does not deliver Internet content”. Though it has been shown above that De La Huerga does deliver Internet content, Appellant’s claimed invention does not deliver Internet content.

Secondly, Appellant’s reading of paragraph 195 of De La Huerga is selective. The paragraph teaches that "[w]hile a preferred embodiment of controller 260 communicates via wireless communication, it should be appreciated that in some embodiments, controller 260 may be linked via communication channels such as wire cables or the like to each of pumps 100a and 100b”. Hence, the communication channels can be either wireless or wired.

Thirdly, it is noted that the features upon which Appellant relies (i.e., that the communication channels are “wireless”) are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Appellant claims "communication" but fails to even teach that the communication is performed over a network of any sort.

Fourthly, whether the connection is wireless or wired is give little weight since either form of connection is obvious and the use of either fails to produce unexpected results.

3. In the remarks, Appellant argues in substance that (2) "[t]he combination of De La Huerga and Zerhusen does not describe an infusion pump comprising "a unitary dual function touch screen display located on the pump housing ... wherein the first portion is configured to display a pump information screen and wherein the second portion is configured to concurrently display a web browser screen," as recited in independent claim 14" because:

- "Zerhusen also teaches, "[when Internet icon 658 is touched, a customized home page or other Internet connection is made." (col. 16, ln. 40-41). Zerhusen does not teach or disclose that once the "Internet icon" is touched making an Internet connection, a pump information screen is concurrently displayed on the screen" and that
- "[t]he only way to arrive at the present invention of "a unitary dual function touch screen display" using teachings of De La Huerga and Zerhusen is to alter a function of one or both the infusion pump display in De La Huerga and

the general purpose computer display in Zerhusen, in which case the alleged "known elements" would not "merely perform the same functions".

The Examiner respectfully disagrees Appellant's arguments are not persuasive.

De La Huerga teaches a display with "first portions" as cited in Figures 17 and 18 and paragraphs 152, 164, and 173. The term "portion" is broadly interpreted and is met by the pump information areas displayed. De La Huerga also teaches touch screens linked and associated with the pump in paragraph 163 but does not teach that the display on the pump is a dual function touch screen or that the second portion is displayed on the dual function touch screen display, however, Zerhusen (Figure 43 and columns 5, 14, 16, 34, and 35) was used to cover the touch screen, the simultaneous display of two portions, and the content of the second portion (the web browser page being met by Internet icon and customized home page or other Internet connection being made). Obviously, the screen taught by Zerhusen is capable of presenting numerous portions. As summarized here, such limitations as broadly claimed by Appellant are met by the prior art as applied in the above rejection.

Furthermore, on 02/09/2010 the claims (claims 1-13) in this application were cancelled and an entire set of new claims was presented as new (claims 14-23) and included the language that the first and second "portions" were "concurrently" displayed. This was considered supported by the specification and has sense been amended to into the current claim limitation language teaching "wherein the first portion is configured to display a pump information screen and wherein the second portion is configured to concurrently display a web browser screen". Indeed, in part V. Summary of the Claimed

Subject Matter as field in the Appear Brief to which this Examiner's Answer is responsive, Appellant cites support for said limitation at "(see, e.g., Specification p. 42 ln. 5-16)" which states:

> "In another embodiment best understood with reference to FIG. 4A, the medical device 14 is designed to act as a web server for the input device 32 or other similar devices within proximity to the medical device 14. In this embodiment, medical device 14 is equipped to supply the input device 32 web browser with medical 10 device related information as well as non-medical device related information such as task lists, etc. Additionally, the medical device14 displays a dual function screen having both a pump monitor screen portion and a web browser screen portion. Further, supplying the medical device 14 as a web server permits a remote 15 web browser to associate with the medical device 14 to configure the medical device 14 or run diagnostics on the medical device 14."

Appellant's limitation is given its broadest reasonable interpretation and no more is read into limitation than is supported by the specification. In fact, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Hence, Appellant claims a "first screen portion" that "is configured to display a pump information screen". De La Huerga teaches a pump with a screen that is configured to display a pump information screen. Zerhusen a patient's bedside device

including a touch screen (Fig. 42 and 43). As show in Fig. 43 the touch screen contains two "portions", or “concurrently” displayed icons in this case. As the prior art is combined, an icon is "configured to" display the pump information screen taught by De La Huerga, with the rational provided in the rejection that:

> “It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of De La Huerga and Zerhusen. The well known elements described are merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.”

The Internet icon taught by Zerhusen is "configured to" display a web browser screen.

Therefore, Appellant’s “configured to” language as used in the claimed limitation is broad and the prior art as cited meets the broadly claimed limitation. Furthermore, the specification does not support a narrower reading than has been provided.

Additionally, column 35, lines 5-20, of Zerhusen teach an Internet browser for interfacing with a server and the Internet wherein "an overlay text application may function in cooperation with the browser to provide an on-screen keyboard, thereby permitting text entry into the browser". Hence, Zerhusen teaches a screen with two portions displaying two different types of information simultaneously, one of which is a web browser screen. As combined with De La Huerga’s pump information screen in place of the keyboard area, it would have been obvious to one or ordinary skill in the art

at the time the invention was made that the described elements are merely a combination of old and well known elements, and in the combination, each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Finally, though it is not relied upon for the purposes of rejection because the prior art of De La Huerga and Zerhusen, as combined in the above obviousness-type rejection, meet all of the claimed limitations, it is also noted that the arrangement of the data on the display is a matter of obviousness design choice in this particular instance. The arrangement of specific elements in the prior art need not be exactly the same as those presented in the claims. Section 2144.04 of the MPEP presents case law that sets legal precedent for supporting the rationale to reject based on design choice.

4. In the remarks, Appellant argues in substance that (3) “[t]he combination of De La Huerga and Zerhusen would logically result in something that is altogether different than the invention recited in claim 14” because

- “The first display portion can be configured to display pump information and the second display portion can be configured to display a web browser. This allows the user of the infusion pump to be able to monitor pump information while simultaneously accessing other types of information through a web browser. For example, one type of information that could be accessed is a nurses' task list. This would allow a nurse to both monitor pump operation and determine what other tasks need to be performed simultaneously without

having to change computer terminals. Thus, the infusion pump screen recited in claim 14 has sufficient real estate and is configured as a multi-function display rendering separate screens unnecessary. The infusion pump recited in claim 14 enables browsing of pump information on a first portion and web information on a second portion" and that

- "there is no description or mention within the combination of De La Huerga and Zerhusen of "concurrently" displaying the claimed two pieces of information on one display, nonetheless, to concurrently display this information on an infusion pump display".

The Examiner respectfully disagrees Appellant's arguments are not persuasive. As per what the prior art does and does not teach, the rejection is explicit and the Examiner's further interpretation and explanation is provided with regard to arguments (1) and (2) above, including the way or ways in which the prior art may be combined to meet the claimed limitations at issue. It is maintained that the references reasonably pertain to the particular problem with which Appellant is concerned and were correctly combined as per MPEP 2141 (III) to meet the claimed invention.

As per Appellant's example of how the invention may be used by a nurse to simultaneously view a task list and monitor pump information, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the

intended use, then it meets the claim. In fact, the claims fail to claim simultaneously viewing anything, and instead claim being "configured to" display information.

Furthermore, Appellant mentions that this would allow simultaneous viewing of screen information (which is not necessarily claimed or supported by the specification) "without having to change computer terminals", which further exemplifies that the results provided by the combination of prior art as cited do not produce unexpected results just as Appellant's claimed invention does not produced unexpected results – because the extent of such functionality provided by the claimed invention is not having to "change computer terminals", no unexpected results are arrived at by combining two such terminals.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/R. S./

Examiner, Art Unit 3626

Conferees:

/Robert Morgan/
Supervisory Patent Examiner, Art Unit 3626

Vincent Millin/vm/
Appeals Practice Specialist